QUID NOVI

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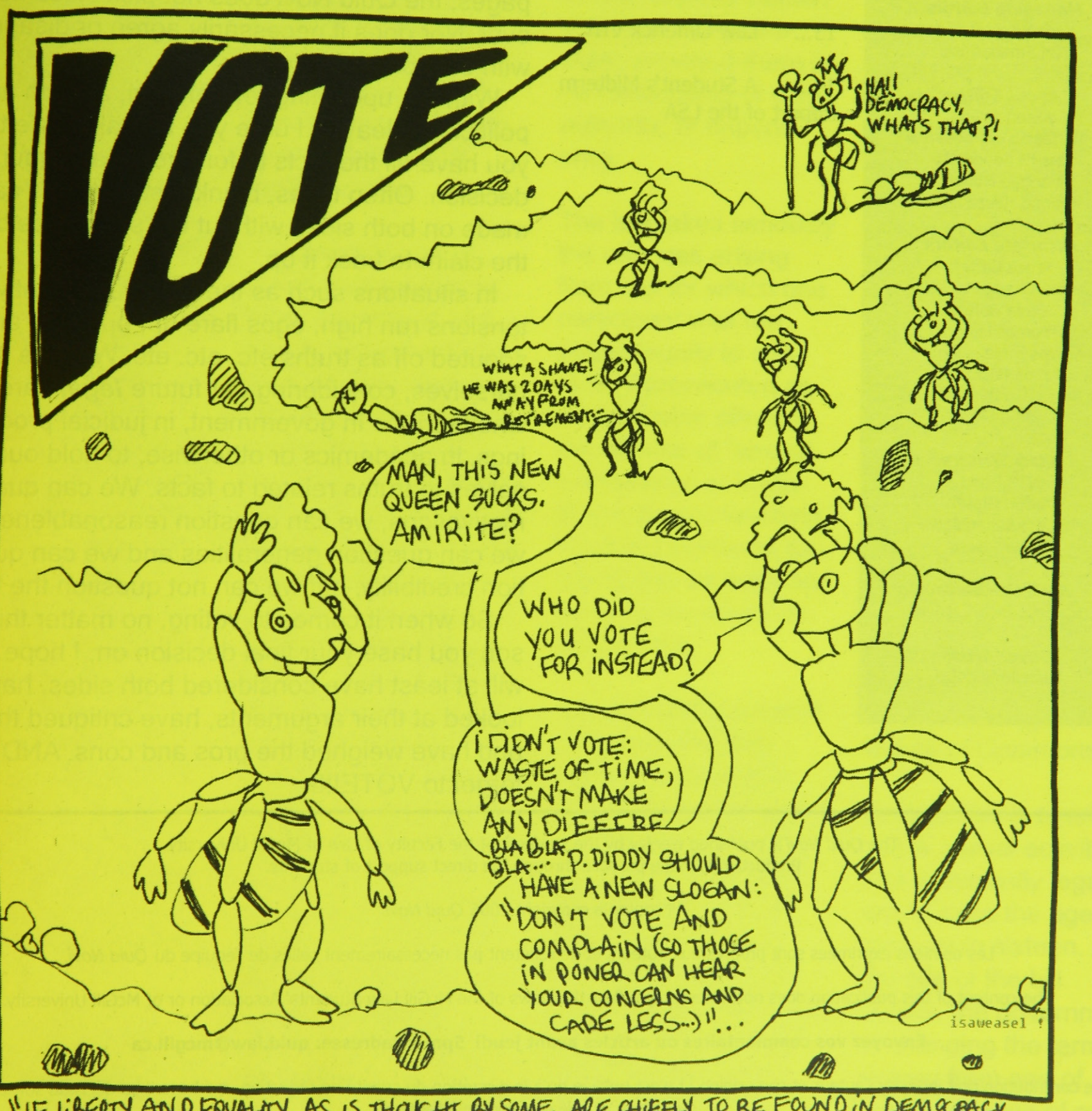

"IF LIBERTY AND EQUALITY, AS IS THOUGHT BY SOME, ARE CHIEFLY TO BE FOUND IN DEMOCRACY, THEY WILL BE BEST ATTAINED WHEN ALL PERSONS ALIKE SHARE IN THE GOVERNMENT TO THE UTMOST." —ARISTOTLE

QUID NOVI

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IN THIS ISSUE...

EDITORIAL

by Andrea Gorys (Law II)
Co-Editor-in-Chief

The Quid Novi is a non-political entity. As a student-run weekly newspaper, we try to have as much of a diversity as possible, without censorship. We maintain our neutrality, no matter the political climate held within the law faculty's walls. Hence, you, our reader, will always receive, we hope, all sides of the story. We encourage you to voice your opinions within our pages; the Quid Novi does not pick sides however. Nor does it necessarily agree or disagree with the content.

With the upcoming referendum, as with any political endeavor, I urge you to make sure that you have all the facts before you make your final decision. Often times, blanket statements can be made on both sides without the substance behind the claim to back it up.

In situations such as the one we currently face, tensions run high, egos flare up, opinions are spouted off as truths etc. etc. etc. We owe it to ourselves, considering our future ***legal*** careers, whether it be in government, in judicial proceedings, in academics or otherwise, to hold ourselves to truths related to facts. We can question motivations, we can question reasonableness, we can question generalities and we can question credibility, but we can not question the facts.

So when it comes to voting, no matter the reason you base your final decision on, I hope you will at least have considered both sides, have looked at their arguments, have critiqued them, and have weighed the pros and cons. AND don't forget to VOTE!!!!

The *Quid Novi* is published weekly by the students of the Faculty of Law at McGill University.
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Envoyez vos commentaires ou articles avant jeudi 5pm à l'adresse: quid.law@mcgill.ca

Toute contribution doit indiquer l'auteur et son origine et n'est publiée qu'à la discrétion du comité de rédaction, qui basera sa décision sur la politique de rédaction telle que décrite à l'adresse:
http://www.law.mcgill.ca/quid/epolicy/html.

Contributions should preferably be submitted as a .doc attachment.

Raising the Age of Consent

by Professor Leckey

On Wednesday 1 November, I participated on a panel (well attended by law students!) hosted by Queer McGill to discuss the federal government's initiative to raise the age of consent for sexual activity from 14 to 16. Last-minute cancellations reduced the panel to a representative from an HIV education/outreach organization and me. As we both agreed that the Harper government's initiative is a bad one, we didn't have an adversarial debate. Still, many people spoke in the discussion period and I think the talk was worthwhile. The editor of the Quid asked me to submit my presentation notes. I agreed to make this brief submission, but it is not, as is evident, a formal paper of any sort. Emily Caputo, a Dobson Fellow, helped me with research on this topic, though errors are mine.

My view, in short, is that the proposed change to the age of consent is deeply flawed on theoretical and practical grounds.

Current Law

The Criminal Code already criminalizes all non-consensual sexual activity, regardless of the ages of the parties involved. It already criminalizes exploitative sex. Using the Internet to prey sexually upon children is already a crime.

The general age at which young persons have capacity to consent to sexual activity – the technical term is "sexual interference or invitation to sexual touching" -- is fourteen. Activities characterized as exploitative – prostitution, pornography, sex with someone in a position of trust or authority – have a higher age of consent, eighteen. The Criminal Code also stipulates a higher age of consent, eighteen, for anal intercourse (s. 159). Although two provincial courts of appeal have declared this last provision to violate the Charter, it remains on the books.

There is an exception to the current age of fourteen. Known as the "close in age" or "peer group" exception, a twelve- or thirteen-year-old can consent to engage in sexual activity with another person less than two years older, provided there is no relationship of trust, authority, or dependency.

The law takes seriously the offences arising from sex for which one participant was too young legally to consent. If prosecuted as an indictable offence, the offence of "sexual interference or invitation to sexual touching" involving someone too young can be punished by up to ten years' imprisonment.

Current Enforcement

Enforcing the laws about sexual activity below the age of consent doesn't appear to be a current priority. The vast majority of prosecutions focus, sensibly enough, on non-consensual sexual activity. American empirical research suggests that age of consent laws are enforced in uneven ways. Men are charged much more than women. Those men who are charged often occupy a marginalized social position. The classic scenario in which age-of-consent laws would be enforced, one study shows, is where a man of colour engages in sex with an underage white girl. (Keep in mind that in most American jurisdictions the age is sixteen.)

The Coming Changes

On 22 June 2006, the federal minister of justice presented Bill C-22, An Act to amend the Criminal Code (age of protection) and to make consequential amendments to the Criminal Records Act, for first reading in the House of Commons.

Its objective is to criminalize sexual activity that is currently legal. It would raise the age of consent to sixteen. As the title of the bill shows, the government is changing the terminology from age of consent to age of protection. This represents a considerable shift in

the perception of young people. Consent focuses on young people as agents, who in the proper circumstances can make decisions and accept responsibility for them. Protection infantilizes them. They need protection from the state. (Someone noted in the discussion that it's funny the federal government wants the age of criminal responsibility to be lowered, while denying the agency of young people when it comes to sex.) Three features of the bill call for notice.

First, it provides a close-in-age exception for a fourteen- or fifteen-year-old who engages in sex with someone up to five years older. A fourteen-year-old could have sex with someone eighteen, but not nineteen. A fifteen-year-old could have sex with someone nineteen. It would be a criminal act for a fourteen- or fifteen-year-old to have sex with someone twenty years old. Second, the bill includes a transitional measure. The existing married or common law relationships of fourteen- or fifteen-year-olds with people five years or more older would be exempted from the new law. A common law relationship is defined here as cohabitation for one year, or cohabitation for less if the couple is expecting a child.

This transitional measure seems underinclusive. It would fail to save any existing sexual relationship a little less committed than marriage or cohabitation for at least a year. A more casual dating relationship could become criminal. Nor, for that matter, would it save a cohabitation relationship involving a fifteen-year-old and a twenty-year-old if they had only lived together for, say, ten months.

Third, despite the clear messages sent by the courts of appeal of Ontario (1995) and Quebec (1998), Bill C-22 doesn't remove the differential age of consent for anal intercourse. The federal government has one clear unfulfilled constitutional duty respecting the current age of consent provisions … And its new bill doesn't bother fulfilling it.

Criticisms of Bill C-22 Impact on public discourse. As a preliminary point, I noted that framing the age of consent issue as one of protecting children from exploitation makes opposing the proposed changes difficult. Nobody wants to be seen as publicly lobbying against children's safety. (One may think of the difficulties of defending liberty of expression once a child pornography element enters the picture.) The federal government has framed the issue so as to minimize debate. The protection of children as a mantra makes it harder to question assumptions – is it really "children" we are talking about? What proof is there that this law would add further "protection" for them? Public discourse about it is already impoverished. It seems only to be getting more impoverished.

Rule of law. Integrity of law at point of enforcement. Policy design and instrument choice. The maintenance of criminal laws not systematically enforced, or the introduction of new laws not intended to be enforced, damages the integrity of the law. It vests large discretion in law enforcement authorities. The current marijuana law may come to mind – still on the books, still enforceable, but far out of sync with social norms. It is only selectively enforced. Statistics on the sexual activity of fourteen- and fifteen-year-olds suggest that the objective of Bill C-22 is not to stop entirely the activity that will be newly criminalized. The effect, then, will be to enlarge the discretion of law enforcement officials.

There is also a discrimination concern. The Canadian record with obscenity legislation – think of the prolonged litigation involving Vancouver queer bookstore Little Sisters – indicates that sexual laws of general application seem to be applied with especial vigour and attention to sexual minorities.

If the objective is not to stop sexual activity by adolescents, but rather to help them make better choices, a number of instruments would be better than the blunt criminal law. Here we see the very effect of how the ostensible problem was defined. Exploitation of children as a problem directs our attention to criminal law. Uninformed choices by adolescents might make us think about education or

greater counseling and support services.

I note in passing that, while the Harper government claims to advocate a reduced central government and a larger role for the provinces, consistent with the division of powers in the Constitution Act, 1867, it is taking what empirical research would suggest is a health and education problem and tackling it through expanding the federal government's criminal law powers.

Assumptions underlying the bill. Given the failure to repeal s. 159, the differential age of consent for anal intercourse, the bill's drafters (or rather, the minister instructing them) seem to understand anal sex to be bad. The underinclusive transition provision suggests that, if fourteen- and fifteen-year-olds having sex is bad, the really bad sex is going to be the sex outside marriages and common law relationships. Good and bad sex are distinguished not by the presence or absence of consent ... But by the institutional location of that sex. The bill assumes that adolescents are children, rather than persons in a transition – perhaps a complicated one, but one nonetheless – from childhood to responsible adult agency. Bill C-22, especially combined with other proposed criminal measures, evinces great faith in the efficacy of criminal law to protect society and improve it.

Anticipated negative effects. My colleague on the panel addressed these in more detail than I can. There are concerns that sexual health education programmes and schools may be less able to discuss sexual health issues frankly with adolescents ... or they may fear that they are, and reduce their efforts accordingly. Fourteen- or fifteen-year-olds having sex may be less inclined to seek testing for STIs if they fear they will have to name a partner five years older or more. For queer youth, the coming-out process may be further complicated if it requires confessing to conduct which, while legal at the moment, may shortly be criminalized.

Concluding Thoughts

I'm afraid the discussion ended on a rather pessimistic note. There is virtually no organized opposition to Bill C-22. Gay rights organizations gearing up to defend same-sex marriage are reluctant publicly to defend what Conservatives spin as exploitation of children. The bill seems almost certain to pass.

I would have thought that, where a government is proposing drastically to reduce the liberty of a group of its citizens, the persuasive burden falls on it to demonstrate that there is a pressing problem which this measure can be realistically expected to alleviate. In my view, any problem relates to failure adequately to enforce existing laws, not failure to have criminalized enough bad conduct. I don't believe the government has even really tried to meet this burden of justification, though I'd be pleased to see differing views in another issue of this paper.

LA SOUVRAINTÉ - L'OUVERTURE

by Alex Herman (Law II)

Le soir du 30 octobre 1995, nous avons tous entendu des paroles qui resteront dans nos oreilles pour bien des années. Après une courte défaite de 50,000 votes dans un referendum, le chef du Parti Québécois a prononcé sa fameuse déclaration, attribuant le blâme de la défaite à deux causes particulières. Le souvenir de ce qu'il a appelé « l'argent et le vote ethnique » restera avec le parti – et la cause de la souveraineté – jusqu'à nos jours. À toutes les fois où le PQ a l'air de se débarrasser du spectre de l'intolérance, une nouvelle controverse éclate.

La nuit même du referendum, à 3h00, Bernard Landry a dit à une employée d'hôtel d'origine mexicaine, d'un air méchant, que le problème avec les immigrants du Québec, c'était qu'ils votent tous pour le Non.

On se souvient de l'affaire Michaud en 1999, quand un péquiste important, membre du cabinet Bouchard, a fait une déclaration manquant de sensibilité envers les victimes de la Shoah. « Ce n'est jamais pareil pour eux, » a dit Yves Michaud en entrevue avec Paul Arcand, parlant des juifs au Québec. « Vous êtes le seul peuple au monde qui avez souffert dans l'histoire de l'humanité. Là, j'en avais un peu ras le bol. » Peut-être ce ne sont pas là les mots d'un anti-sémite convaincu, mais le débâcle dans la presse qui s'ensuivit montre la sensibilité des Québécois envers le discours des nationalistes qui se montre à l'égard des minorités.

Cependant, la scène du parti change. Les jeunes partout au Québec s'engagent contre les propos de la vielle garde de la souveraineté. Ils font partie d'une génération beaucoup plus tolérante, beaucoup plus accueillante aux nouveaux immigrants au Québec, beaucoup moins attachée à la centralité de la race dans la cause de la souveraineté. On a même vu, l'année dernière, un membre de cette génération être élu chef du parti. André Boisclair représente un PQ plus ouvert à la différence. Son Québec à lui est de plus en plus cosmopolite, et, bien sûr, de plus en plus urbain. Ceci sépare la souveraineté de son passé sombre et pourrait même convaincre un grand nombre de « nouveaux Québécois » à joindre la cause.

Toutefois, cette ouverture présente un problème. Quand M. Boisclair a battu Pauline Marois, représentante de la vieille mentalité, le parti a eu, pour la première fois de son histoire, un chef qui a grandi après que le mouvement de la souveraineté eut été fondé. Cette nouvelle génération n'a pas eu à se battre contre un gouvernement fédéral qui dominait, en anglais, les domaines de la culture et de la politique.

Quand le PQ a été fondé, avec une politique de souveraineté-association, c'était une réaction contre la centralisation d'Ottawa. Bernard Landry, qui a été soldat dans l'armée canadienne six étés pendant ses études, devait parler anglais à tous ses officiers. « Speak English, private Landry! » lui a-t-on crié une fois. « That's an order! » Dans une entrevue avec Radio-Canada, il explique que ses expériences dans l'armée, en plus de le faire devenir pacifiste, l'ont aussi convaincu de la nécessité de la souveraineté. On se demande si quelqu'un comme André Boisclair avait la même sorte d'urgence – une réaction à la domination – quand il a décidé de se joindre au Parti Québécois.

La nouvelle génération a hérité de ce qui a déjà été construit pour eux. Elle n'a plus le sens guerrier des générations d'avant. Le Canada, maintenant un pays avec un gouvernement officiellement bilingue, peut s'adresser à tous ses citoyens dans leur langue maternelle, peu importe qu'ils soient anglophones ou francophones. L'armée canadienne est aussi bilingue: les soldats

francophones n'ont plus besoin de répondre aux ordres dans une langue étrangère. Ces changements au plan fédéral ont réussi à transformer le Canada dans un pays beaucoup plus tolérant qu'avant. Maintenant que les mouvements nationalistes du Québec ont, finalement, aussi souscrit à cet idéal, tout en retenant la souveraineté comme priorité, on se demande si le chef du PQ – et tous les futurs chefs – pourra maintenir une opposition continue contre un Canada qui n'est plus le pays des années 60. C'est le problème éternel du nationalisme: plus on accepte que les autres se joignent à notre cause, moins on se trouve différent par rapport aux autres.

Watch this space for information on the upcoming debate on the issue, hosted by the Canadian Constitutional Club de la constitution canadienne.

GLORY AND RICHES CAN BE YOURS

It has recently come to the attention of the McGill Law Journal that a prize exists for the best student publication appearing in the McGill Law Journal. The Max Crestohl Prize has a value of $350 and hasn't been awarded since 2001.

Students are welcome to submit to the Journal in any format, but in recent years pieces accepted for publication have most often been case comments, book reviews or book notes.

Submission information can be found here:
http://journal.law.mcgill.ca/ensubmissions.html

Case Comments

Case comments serve to alert readers to a recent decision and to offer an initial scholarly response to the decision to help appeal courts, academics and practitioners assess its impact. Although most commented
decisions will be from Canadian courts, commentary on decisions rendered by international bodies or arbitral tribunals (e.g. the WTO Dispute Settlement Body, the International Court of Justice, or NAFTA Tribunals) are also welcome. Case comments should be shorter than full articles (usually less than 10,000 words), which make them an ideal medium for student submissions.

Please feel free to contact Albert Chen (Case Comments Editor) at albert.chen@mail.mcgill.ca for more information.

Book Reviews and Book Notes

The Journal maintains a library of books recently received from publishers. Students are encouraged to peruse the collection and choose a book for review. Alternately, the Journal can request review copies of a particular book if a student is interested in submitting a review or note for consideration. Students are of course free to submit reviews of books acquired independently as along as they have been published recently.

Please feel free to contact Robert Sampson (Book Reviews Editor) at Robert.sampson@mail.mcgill.ca for more information.

COFFEEHOUSE REFERENDUM
THE NO SIDE

by Kara Morris (Law III) on behalf of the no committee

This Tuesday, Nov. 7 there will be a vote on coffeehouse. You are asked to decide if you like the way coffeehouses are this year. The LSA has made changes this year to try to improve all coffeehouses, and to increase the benefits obtained from sponsorship. These changes have already made a significant difference to the faculty as a whole. On Nov. 7, if you have enjoyed coffeehouses this year, vote NO to reversing the changes to coffeehouse.

Sponsorship this year is up significantly. At this point in the year, we have already exceeded last year's total sponsorship by $16 000, with more yet to come. This investment is targeted at law students specifically. Firms are not willing to invest unlimited funds into our faculty – the resources available are finite. By prioritizing other investments over spending on alcohol, the LSA has changed McGill's relationship with firms to a relationship based on mutual recognition and support.

The coffeehouse package, including increased attendance and focus on community and clubs coffeehouses also envisioned a more targeted use of sponsorship resources. Contributions to a greater diversity of events, such as Skit Nite, conferences, and lunches provide more varied student experience. The new policy has created more durable investments in the faculty. Truly, firms are seeking new things to put their names on, and these things, such as a new sound system, contributions towards the TV in the student lounge, and an LCD announcement screen, will all be around for years to come, not just for one Thursday evening.

Furthermore, it is the goal of the LSA to improve the perception of McGill students while providing them with opportunities to meet with a variety of legal practitioners. Fewer non-law students at law firm functions consuming resources targeted to law students means a better impression of McGill law students as a whole.

The LSA has committed itself to holding a referendum at the end of the year on whether you would like to continue on with the changes, or go back to the previous system. After all of next term's coffeehouses everyone will have a better picture of what the changes mean to overall attendance, sponsorship, and coffeehouse experience. A No vote now preserves your choice to evaluate overall the changes made to coffeehouse, not based on the first few coffeehouses of the year, but all coffeehouses as a total package. In the end, the LSA truly believed the changes it was making were in the best interests of students, to accomplish goals set out, and to make the faculty of law at McGill a better and more inviting place. The referendum this Tuesday, Nov. 7 asks you whether you would like to reverse the changes the LSA has made to coffeehouse this year. The No committee asks you to vote NO on the referendum in order to preserve the positive outcomes reached through the changes to coffeehouse.

On Tuesday, November 7

HAVE
YOUR
VOICE
HEARD

Vote
in the
COFFEEHOUSE REFERENDUM

Remember your student card

PLAYERS' THEATRE

PRESENTS

TALKING TO TERRORISTS

BY ROBIN SOANS
NOVEMBER 16–19, 23–26 AT 8:00 P.M.
(NOV.19 AND 26 AT 2:00 P.M.)

"Ordinary people don't have a dream in their heads...
not like them…not like the people you're going to meet."

In contrast to the often misshapen "social issues" play, Robin Soans crafts a delicate, humourous and insightful exploration of terrorism. Using years of interviews and research, he constructs apt, striking and often droll scenes that combine the experiences of people involved with terrorism.

"Talking to Terrorists", commissioned by the Royal Court of England, undermines abstract conceptions of terrorism without editorializing or romanticizing terrorists. His play met with critical acclaim in its London début in 2005.

Freedom-fighters to psychologists, hostages to politicians—from Africa, Turkey, Ireland, Israel, Iraq, and Britain they assemble under one roof to talk and to listen.

After select performances of the play, informed and diverse speakers will lead roundtable discussions. Drop by the Arts Lounge or Players' Theatre to read and contribute comments to a growing forum. Wine and cheese will be served on Saturday, Nov. 25, after the show.

Director, Heather Laird, passionately brings her knowledge of communications and Middle Eastern Studies to bear in her dramatic experience. She has directed Rentals, The Vagina Monologues, The Importance of Being Earnest, No Exit, and co-wrote Fairytales.

Featuring Kim Adams, Sara Rose El Hajoui, Murteza Khan, Sarin Moddle, Tara Narula, Charlie O'Keefe, Reilly Pollard, and Stuart Wright.

Stage Manager: Emily Kashul. Assistant Stage Manager/Props Master: Alexandra Pace. Lighting: Byron Tau. Sound: David Windrim. Set: Meaghan Davis. Costumes: Alexis Wong and Stuart Wright.

"Talking to Terrorists" runs November 16–18, 23–25 at 8:00 p.m.; Nov.19 and 26 at 2:00 p.m. Player's Theatre is located at 3480 McTavish 3rd floor and is wheelchair accessible. Tickets are available at (514)398-6813; $8 for adults, $6 for students/seniors.

A preview will be held for the media on Saturday, November 11 at 7 pm. Photographers welcome. Contact: Katie Snetsinger (514)792-5283, publicity.players@gmail.com

A RESPONSE

by XXX (LAW XX)

Peter Kostantinov (Quid, October 24) is yet one more person who doesn't understand, distorts or confuses my arguments against same-sex marriage. I will not address the problems with his article individually or directly, rather I will set out the case I make against same-sex marriage.

My primary argument does not focus on new reproductive technologies, as he states; that is a secondary argument, although an important one. My primary argument is that marriage is not just a social construct as same-sex marriage advocates argue. Rather, there is a biological reality at the centre of marriage, namely, the inherently procreative relationship between a man and a woman - a woman and a man can, together, give life to a child. Traditional marriage surrounds that biological reality with culture to create a social and legal institution that is meant to nurture and protect the relationship and the children that result. In doing so, marriage ties biological parents to their children and vice-versa. Stating the matter bluntly, I oppose same-sex marriage because it eliminates the right of all children (whether they later prove to be gay or straight adults) to both a mother and a father, preferably their own biological parents, and to be reared by them, unless there are good reason to the contrary in the "best interests" of a particular child.

The radical change that same-sex marriage implements is to change the basis of parenthood from natural (or biological) parenthood to legal (and social) parenthood. The norm that a child's parents are the biological parents unless an exception can be justified as in the best interests of a particular child (as in adoption), is changed to a child's parents are simply who the law says they are. The Civil Marriage Act which implemented same-sex marriage also implemented this change by replacing the term "natural parent" with "legal parent" in Federal legislation. In short, same-sex marriage unlinks children's biological bonds to their natural parents and their legal rights in that regard.

Over thousands of years across all types of societies and cultural and religious institutions, marriage has been connected with procreation, and, therefore, limited to the union of opposite sex people, whether in monogamous or polygamous unions. The arguments that people have children outside marriage, or children lose natural parents as a result of death, divorce or adoption, do not detract from the rights that marriage, when limited to opposite-sex people, establishes for children, in general, with respect to their natural parents. The issue is not whether opposite-sex marriage works perfectly with respect to children's rights, but whether children, as a general class, and we as a society, are better off with traditional marriage than without it.

The argument that opposite-sex marriages in which the partners choose not to or can't have children mean that marriage is not linked to procreation misses the point. Unlike same-sex marriage, these marriages do not overtly contravene the procreative symbolism of marriage at the general level and in doing so negate children's rights.

Same-sex marriage forces us to choose between same-sex couples' claims to have access to marriage and children's rights with respect to their biological parents. There are good arguments on both sides. Same-sex marriage is a very powerful statement about the horrible wrongs of discrimination on the basis of sexual orientation. But, for a range of general ethical reasons, I believe we should give preference to children's rights. it merits noting that civil unions do not raise this same conflict, because they do not carry the right to found a family.

Marriage is a compound right – the right to marry and found a family (Universal Dec-

laration of Human Rights). Consequently, if excluding same-sex couples from marriage is discrimination, preventing them from founding a family is also very likely to be discrimination. New reproductive technologies (NRT's) will probably mean that two men or two women can have their own genetically shared baby. Should that be allowed? Would prohibiting it be discrimination? More immediately, there is also likely to be a constitutional challenge to the current prohibition on payment to surrogate mothers in the Assisted Human Reproduction Act on the grounds that it discriminates against married gay men and contravenes their right to found their families in that way.

All of the above means we need to consider new rights for children. So far we have looked at the ethics of the new reproductive technologies almost entirely from the perspective of adults and in terms of their immediate use. But the question of what, ethically, we owe the children born through their use, has been largely ignored. However, as the first cohort of children born as a result of NRT's reaches adulthood, they are changing our focus. The issue of children's rights to know their genetic identity or the nature of their genetic origins arises, in one way or another, in the contexts of adoption, the use of new reproductive technologies, and same-sex marriage. The connection among these contexts is that they all unlink child-parent biological bonds. Each context raises one or more of three important issues: i) Children's right to know the identity of their biological parents; ii) Children's right to both a mother and a father, preferably their own biological parents; and iii) Children's right to come into being with genetic origins that have not been tampered with.

I believe children have a right to know the identity of their biological parents. It is one matter for children not to know their genetic identity as a result of unintended circumstances. It is quite another matter to deliberately destroy children's links to their biological parents, and especially for society to be complicit in this destruction – to knowingly and intentionally make them "genetic orphans". It is now being widely recognized that adopted children have the right to know who their biological parents are whenever possible, and legislation establishing that right has become the norm. The same right is increasingly being accorded to children born through gamete (sperm or ovum) donation. Ethics, human rights, and international law (the Convention on the Rights of the Child) — as well as considerations such as the health and well-being of adopted and donor-conceived children — all require that children have access to information regarding their biological parents. And it is not just these children who have this right, but their future descendants as well. Children deprived of knowledge of their genetic identity — and their descendants — are harmed physically and psychologically.

Respect for children's rights in these regards requires that the law should prohibit anonymous sperm and ova donation, establish a donor registry, and recognize children's rights to know their biological parents and, thereby, their own biological identity.

I have explained above that I believe children have a right to both a mother and a father, preferably their own biological parents and to be reared by them unless there are good reasons to the contrary in the best interests of a particular child.

I also believe that children have a right to be born with a natural biological heritage and from natural biological origins — that is, from a natural untampered-with sperm from one, identified, living, adult man and a natural untampered-with ovum from one, identified, living, adult woman. The one, identified, living, adult requirement is necessary to avoid some unethical possibilities. It would not be ethical to create a child from two ova or two sperm, or from sperm or ova made from stem cells, so two women or two men could have their "own genetically shared baby". I also believe it is unethical to create a child from gametes made from aborted fetuses - a

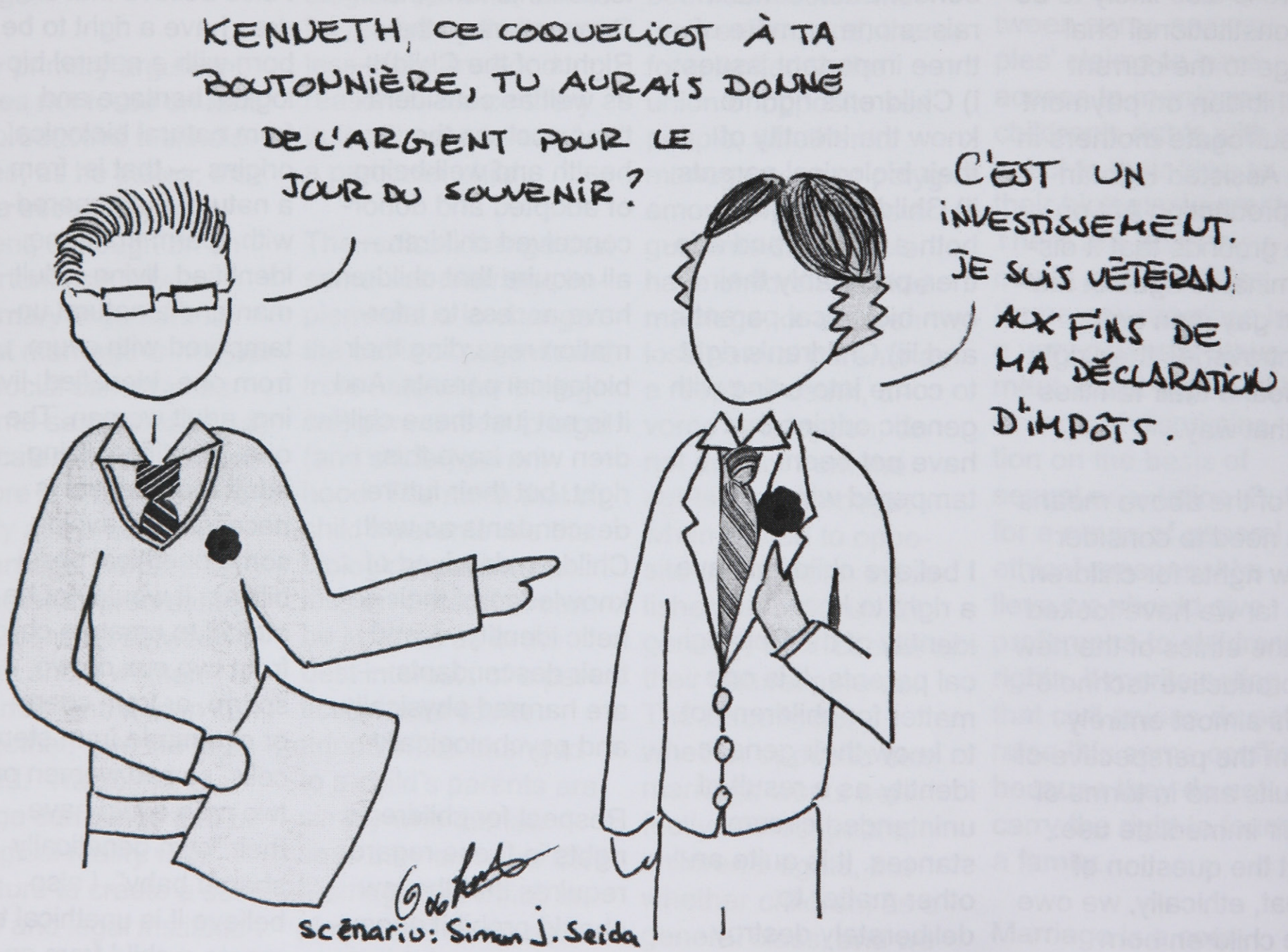
child whose genetic parent was never born or to conceive a child with gametes from a dead donor knowing the child will never have an opportunity to meet its parents. All these rights of children are of the same basic ethical nature — obligations of non-maleficence, that is, obligations to first do no harm.

Consequently, as a society, we have obligations to ensure respect for these fundamental human rights of children. It is one matter, ethically, not to interfere with people's rights of privacy and self-determination, especially in an area as intimate and personal as reproduction. It is quite another matter for society to become complicit in intentionally depriving children of their right to know and be reared by their biological parents, and have contact with their wider biological family, or their right to be born from natural biological origins. When society approves or funds procedures that can deprive children of these rights and, arguably, when it fails to protect such rights of children — for instance, by failing to enact protective legislation — society becomes complicit in the breaches of rights that ensue. Those obligations extend also to future generations.

In short, we must consider same-sex marriage in light of children's rights and needs, not just those of adults.

THE ADVENTURES OF CAPITAINE CORPORATE AMERICA

By Laurence Bich-Carriere. (Law III)



"JOUR DE SOUVENIR"

Law Limerick VIII

by Francie Gow (Law III)

Should I go hear a head of state speak?
Or read tax so my prof doesn't freak?
Ah, who cares what he says
He may be a prez
But another will pass through next week

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A STUDENT'S MIDTERM REPORTS OF THE LSA

by Kyle Gervais (LAW III)

It was with humour and enjoyment that I read the LSA's Midterm Reports. Is this Auto-Evaluation scheme to become the new faculty standard? I am in favour of that initiative. This is a student's Midterm Report for the LSA. This assessment, will be removed from the on-going CoffeeHouse debate.

The LSA's midterm report was complete with a list of tasks which they have completed. This is the first major hurdle faced by the LSA, its apparent "legacy oriented" nature. From my experience the student body doesn't want an LSA committed to doing things. Most want an LSA which quietly accomplishes its tasks, puts out fires, and represents students when needed. Problems arise when LSA executives try to push to fast and do things. Their personal aspirations exceed the demands of the student body. Assumed tasks are too large and jobs are poorly done.

Taking from the list of LSA "accomplishments", consider this a sober second thought. The Lounge has yet to be completed. While admittedly the renovated Lounge has been on the plate of successive LSA administrations, Kara Morris took credit for it. I will therefore place blame at her feet. The Lounge looks nice, but I don't see what all the hype was about—new paintjobs a polished floor and Ikea lights? What a tangible benefit that we are still waiting for. Put the microwaves in and deal with the flat screen TV later. On that issue, did we really need a flat screen TV. Will it be protected better than our previous TV's and satellite decoders? And for lawyers, the glass wall seems dangerous, especially since the DANGER tape is still on it. I wonder when that inevitable accident to occur and what the lawsuit will look like.

The second failure is the "new" LSA website. Questions should be raised if this was a judicious use of LSA resources revamping a website which was less than two years old. Was this a dire concern of the student body? To compound the failure, it is not fully functional, even if the month of November has begun. Important functions, such as Pubdocs can no longer be accessed through the site. Why wasn't the 'old' website used until the 'new' one was fully functional.

The third tangible failure was the delayed Bogenda. Again, here the LSA deserves some credit for some innovative elements, including the membership to Copy Nova, and using picture for all years in the Bottin. However, an agenda that is released in the 7th week of school is pointless.

There are other examples of the LSA taking on too much which occur outside of everyday student life. The "new" sponsorship package given to firms to solicit their funds is an example. Claude Lévesque, the VP-PR, deserves credit for successfully increasing sponsorship levels. However, the decision to change the entire sponsorship scheme within the first month of his mandate was a mistake. First, it is not clear from the student perspective the impetus for the change. It is clear however that it occupied the VP-PR for much of the summer. It was also evident that it made the task of the Orientation Committee more difficult, as funding was secured later in the summer. Finally, in the haste to send out the "new" sponsorship package it was not thoroughly edited, and apparently has obvious typos. Would it not have been better to make this a year long task and give it to next years VP-PR?

The LSA made life difficult for committees in other ways. Broadly, the LSA tries to micromanage tasks, not wanting any of its responsibility to be delegated. An example I am familiar with, the Orientation Committee, faced these problems. From the delayed funding discussed above, to a complete lack of communication, the Orientation committee largely worked in spite of the LSA.

Problems began with the politicking of Committee assignments. Then a series of decision that the LSA took during their summer retreat, but failed to communicate to interested parties. Grab bags filled with law firm sponsored trinkets, as well as material from McGill services are typically given to incoming first year students. The LSA took a decision that these grab bags were a bad idea and banned them. Problem was that a) not everyone in the LSA was on board b) that they didn't tell anyone.

There was also an attempt to micromanage the Orientation booklet. The original plan was to have each club submit a short blurb to inform incoming students and get them interested. Unfortunately, the LSA suggested that the Orientation Committee do not use club blurbs as they were planned for the Bogenda. The bogenda that was 7 weeks late. Ultimately, some LSA executives were truly helpful, including some which I have been critical of in this article. Other LSA executives, some who have listed Orientation as accomplishments, were strangely absent most of the time.

Finally, there is the issue of CoffeeHouse. I actually support then end result of the changes, it is the process which bothered me. The LSA left their retreat with a new alcohol policy, and then didn't tell anyone about it. It was only once rumours started to spread through students at Montreal Law firms and those working at the faculty that the first elements of the policy was revealed. Only afterwards was there an explanation and a reasoning developed.

Broadly, this exemplifies what bothers me about the LSA, the paternalistic attitude directed towards students. Whether it is making decisions for us on Grab Bags, or mandating how to interact with our Law Partners (upper year students laughed at that email), to changing CoffeeHouse and then falsely claiming you had it on your platform, the LSA has an aura of contempt for its peers.

McMillan Binch Mendelsohn LLP is pleased to host a speaker session for McGill law students with Senator Hugh D. Segal, C.M.: "The Charter of Rights - The Notwithstanding Clause and the issue of Parliamentary Abdication". The session will be held on Friday, November 10, 2006 from 12:30 p.m. to 1:30 p.m. at the Moot Court. Please R.S.V.P. on the sign-up sheet at the LSA or by email to Claude Lévesque at vp-pr.lsa@mail.mcgill.ca.

For additional information, please contact Claude Lévesque by email. We hope to see you there!

J|S|D|L|P R|D|P|D|D

The *McGill International Journal of Sustainable Development Law and Policy* and the *Human Rights Working Group* present:

PEOPLE BEFORE PROFITS:

THE TRIPS REGIME AND ACCESS TO AFFORDABLE MEDICINES FOR PEOPLE LIVING WITH HIV/AIDS – INSIGHTS FROM INDIA

A Lecture by **Anand Grover**

Anand Grover is a practicing lawyer in the Bombay High Court in India. He is the Director of the Lawyers' Collective HIV/AIDS Unit which he helped found. He was a member of the drafting group of the International Guidelines on Human Rights and HIV/AIDS, and is presently a member of the Reference Group on Human Rights advising UNAIDS and the National AIDS Council of India, the National Advisory Board for the International AIDS Vaccine Initiative in India, and the National Board for the Bill and Melinda Gates Foundation's Avahan India AIDS Initiative. In August, Mr. Grover presented the Jonathan Mann Memorial Lecture at the 2006 Toronto International HIV/AIDS Conference.

Tuesday, November 14th at 4pm

Moot Court Room in New Chancellor Day Hall, 3644 Peel St.

Please also join us in Thompson House after the Lecture for continued informal discussion.

hrwg